

CHAPTER 9—CONTRACT DISPUTES

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§ 601. Definitions

As used in this chapter—

(1) the term “agency head” means the head and any assistant head of an executive agency, and may “upon the designation by” the head of an executive agency include the chief official of any principal division of the agency;

(2) the term “executive agency” means an executive department as defined in section 101 of title 5, an independent establishment as defined by section 104 of title 5 (except that it shall not include the Government Accountability Office), a military department as defined by section 102 of title 5, and a wholly

owned Government corporation as defined by section 9101(3) of title 31;

(3) the term “contracting officer” means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term “contractor” means a party to a Government contract other than the Government;

(5) the term “Administrator” means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.];

(6) the terms “agency board” or “agency board of contract appeals” mean—

(A) the Armed Services Board of Contract Appeals established under section 607(a)(1) of this title;

(B) the Civilian Board of Contract Appeals established under section 42 of the Office of Federal Procurement Policy Act [41 U.S.C. 438];

(C) the board of contract appeals of the Tennessee Valley Authority; or

(D) the Postal Service Board of Contract Appeals established under section 607(c) of this title;

(7) the term “Armed Services Board” means the Armed Services Board of Contract Appeals established under section 607(a)(1) of this title;

(8) the term “Civilian Board” means the Civilian Board of Contract Appeals established under section 42 of the Office of Federal Procurement Policy Act [41 U.S.C. 438]; and

(9) the term “misrepresentation of fact” means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 95-563, §2, Nov. 1, 1978, 92 Stat. 2383; Pub. L. 104-106, div. D, title XLIII, §4322(b)(5), Feb. 10, 1996, 110 Stat. 677; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109-163, div. A, title VIII, §847(d)(1), Jan. 6, 2006, 119 Stat. 3393.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 95-563, which enacted this chapter, amended section 5108 of Title 5, Government Organization and Employees, section 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of former Title 31, Money and Finance, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Office of Federal Procurement Policy Act, referred to in par. (5), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

In par. (2), “section 9101(3) of title 31” substituted for “section 846 of title 31, United States Code” on authority of Pub. L. 97-258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2006—Par. (2). Pub. L. 109-163, §847(d)(1)(A), struck out “, the United States Postal Service, and the Postal Rate Commission” before semicolon at end.

Par. (6). Pub. L. 109-163, §847(d)(1)(C), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “the term ‘agency board’ means an agency board of contract appeals established under section 607 of this title; and”.

Pars. (7) to (9). Pub. L. 109-163, §847(d)(1)(B), (D), added pars. (7) and (8) and redesignated former par. (7) as (9).

2004—Par. (2). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Pars. (3), (5) to (7). Pub. L. 104-106 substituted “the term” for “The term”.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-163 effective 1 year after Jan. 6, 2006, see section 847(g) of Pub. L. 109-163, set out as a note under section 5372a of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section 16 of Pub. L. 95-563 provided that: “This Act [see Short Title note below] shall apply to contracts entered into one hundred twenty days after the date of enactment [Nov. 1, 1978]. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter.”

SHORT TITLE

Section 1 of Pub. L. 95-563 provided: “That this Act [enacting this chapter, amending section 5108 of Title 5, Government Organization and Employees, sections 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of former Title 31, Money and Finance, and enacting provisions set out above] may be cited as the ‘Contract Disputes Act of 1978’.”

§ 602. Applicability of law**(a) Executive agency contracts**

Unless otherwise specifically provided herein, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) entered into by an executive agency for—

- (1) the procurement of property, other than real property in being;
 - (2) the procurement of services;
 - (3) the procurement of construction, alteration, repair or maintenance of real property;
- or,
- (4) the disposal of personal property.

(b) Tennessee Valley Authority contracts

With respect to contracts of the Tennessee Valley Authority, the provisions of this chapter shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this chapter, contracts of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or

operation of the electric power system shall be excluded from the chapter.

(c) Foreign government or international organization contracts

This chapter does not apply to a contract with a foreign government, or agency thereof, or international organization, or subsidiary body thereof, if the head of the agency determines that the application of the chapter to the contract would not be in the public interest.

(Pub. L. 95-563, §3, Nov. 1, 1978, 92 Stat. 2383.)

§ 603. Maritime contracts

Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 or 22 of title 46, Appendix, as applicable, to the extent that those chapters are not inconsistent with this chapter.

(Pub. L. 95-563, §4, Nov. 1, 1978, 92 Stat. 2384.)

REFERENCES IN TEXT

Chapter 20 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 9, 1920 (41 Stat. 525, as amended), known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§741 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46, Appendix, and Tables.

Chapter 22 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 3, 1925 (43 Stat. 1112, as amended), known as the Public Vessels Act, which is classified generally to chapter 22 (§781 et seq.) of Title 46, Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

§ 604. Fraudulent claims

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection¹ shall be determined within six years of the commission of such misrepresentation of fact or fraud.

(Pub. L. 95-563, §5, Nov. 1, 1978, 92 Stat. 2384.)

§ 605. Decision by contracting officer**(a) Contractor claims**

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based

¹ So in original. Probably should be “section”.